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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 CAREY DWAYNE DORSEY,

12 Plaintiff,

13 vs.

14 SAN DIEGO COUNTY PROBATION
15 DEPARTMENT,

Defendant.

CASE NO. 11-cv-1024 BEN (RBB)

**ORDER DISMISSING ACTION
WITHOUT PREJUDICE**

16 On May 10, 2011, Plaintiff Carey Dwayne Dorsey filed a Complaint alleging violation of the
17 Americans with Disabilities Act. Plaintiff also filed a motion to proceed *in forma pauperis* and a
18 request for the appointment of counsel. (Docket Nos. 2, 3.) On June 6, 2011, the Court granted
19 Plaintiff's motion to proceed *in forma pauperis*, denied Plaintiff's request for appointment of counsel,
20 and dismissed the action without prejudice. Plaintiff filed an amended complaint on July 19, 2011.
21 (Docket No. 8.) For the reasons stated below, the Court **DISMISSES** the First Amended Complaint.

22 **BACKGROUND**

23 Plaintiff's First Amended Complaint alleges "TORTS, of Slander, libel, assault, & false
24 incarceration, lost wages, Pain, And Suffering, And emotional distress, And VIOLATIONS, OF THE
25 AMERICANS WITH DISABILITIES ACT, (ADA), commented [sic] aginist [sic] me by the SAN
26 DIEGO COUNTY PROBATION DEPARTMENT AND OFFICER JOE HART." (First Am. Compl.
27 at 1.) The only specific facts Plaintiff alleges are as follows:
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A DISCRIMINATION ACT VIOLATION OF THE ADA, was commented [sic]

DISCUSSION

The legal sufficiency of a complaint is tested under Federal Rule of Civil Procedure 12(b)(6). *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). Under Rule 12(b)(6), dismissal is appropriate if the complaint fails to state a facially plausible claim for relief. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556–57 (2007). That is, the complaint must state enough facts to raise a reasonable expectation that discovery will reveal evidence of the claim. *Id.* at 556. Dismissal is also appropriate when the complaint lacks a cognizable legal theory. *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 534 (9th Cir. 1984). The court must assume the truth of all factual allegations and construe them in the light most favorable to the plaintiff. *Thompson v. Davis*, 295 F.3d 890, 895 (9th Cir. 2002); *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337–38 (9th Cir. 1996). *Pro se* litigants are not “excused from knowing the most basic pleading requirements.” *Am. Assoc. of Naturopathic Physicians v. Hayhurst*, 227 F.3d 1104, 1107 (9th Cir. 2000).

Here, Plaintiff's First Amended Complaint is legally insufficient. Plaintiff has failed to allege facts that establish a prima facie case for discrimination under Title II of the APA, slander, or libel. *See Lovell v. Chandler*, 303 F.3d 1039, 1052 (9th Cir. 2002) ("To establish a violation of Title II of the ADA, a plaintiff must show that (1) she is a qualified individual with a disability; (2) she was excluded from participation in or otherwise discriminated against with regard to a public entity's services, programs, or activities, and (3) such exclusion or discrimination was by reason of her disability."); *Siam v. Kizilbash*, 130 Cal. App. 4th 1563, 1581 (Cal. App. 6th Dist. 2005) ("[C]auses of action for libel and slander require evidence of false and unprivileged publications that have a tendency to injure a person in the manner described in the statutes."); *Mann v. Quality Old Time Serv., Inc.*, 120 Cal. App. 4th 90, 106 (Cal. App. 4th Dist. 2004) ("To establish a prima facie case for slander, a plaintiff must demonstrate an oral publication to third persons of specified false matter that has a natural tendency to injure or that causes special damage."). In addition, Plaintiff fails to lay out facts that raise a reasonable expectation that discovery will reveal evidence of assault, false arrest, lost wages, emotional distress, and pain and suffering. To state a plausible claim for relief, Plaintiff must allege his claims with more clarity so that the defending party is capable of forming a response. Although Plaintiff argues that the facts are laid out in "Title II of the Americans with Disabilities Act Section 504 of the Rehabilitation Act of 1973 Discrimination Complaint FORMS, WITH THE United States Department of Justice, Civil Rights Division Disability Rights Section Case # 204-12-0," (First Am. Compl. at 3), the First Amended Complaint must be complete in itself without reference to any superseding pleading. *See* S.D. Cal. Civ. L.R. 15.1. Accordingly, the Court finds that Plaintiff's First Amended Complaint fails to state a cognizable claim for relief.

CONCLUSION

For the reasons set forth above, the First Amended Complaint is **DISMISSED WITHOUT PREJUDICE**. Plaintiff is granted leave to file a second amended complaint that corrects the deficiencies outlined above. Any such amended complaint must be filed no later than October 24,

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1 2011. The second amended complaint must be complete in itself without reference to the superseded
2 pleading. *See* S.D. Cal. Civ. L.R. 15.1. Defendants not named and all claims not re-alleged in the
3 amended complaint will be deemed to have been waived. *See King v. Atiyeh*, 814 F.2d 565, 567 (9th
4 Cir. 1987).

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6 **IT IS SO ORDERED.**

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8 DATED: September 2, 2011


HON. ROGER T. BENITEZ
United States District Court Judge